

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 82, “Intermediate Care Facilities for the Mentally Retarded,” Iowa Administrative Code.

The proposed amendments change terminology to use the preferred terms “intellectual disability” and “intellectually disabled” rather than “mental retardation” or “mentally retarded.”

The Iowa Legislature recently passed 2012 Iowa Acts, Senate File 2247, which makes similar terminology changes in the Iowa Code. Although that bill does not direct the Department to make rule changes, these amendments are aligned with the intent of the legislation.

Any interested person may make written comments on the proposed amendments on or before November 20, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 82**, title, as follows:

INTERMEDIATE CARE FACILITIES FOR ~~THE MENTALLY RETARDED~~ PERSONS WITH AN INTELLECTUAL DISABILITY

ITEM 2. Amend rule 441—82.2(249A), introductory paragraph, as follows:

441—82.2(249A) Licensing and certification. In order to participate in the program, a facility shall be licensed as a hospital, nursing facility, or an intermediate care facility for the mentally retarded persons with an intellectual disability by the department of inspections and appeals under the department of inspections and appeals rules found in 481—Chapter 64. The facility shall meet the following conditions of participation:

ITEM 3. Amend subrule 82.2(1) as follows:

82.2(1) Governing body and management.

a. to c. No change.

d. *Services provided under agreements with outside sources.*

(1) If a service required under this rule is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement shall:

1. Contain the responsibilities, functions, objectives, and other terms agreed to by both parties.

2. Provide that the facility is responsible for ensuring that the outside services meet the standards for quality of services contained in this rule.

- (3) The facility shall ensure that outside services meet the needs of each client.
- (4) If living quarters are not provided in a facility owned by the ~~ICF/MR~~ ICF/ID, the ICF/MR ICF/ID remains directly responsible for the standards relating to physical environment that are specified in subrule 82.2(7), paragraphs “a” to “g,” “j,” and “k.”

e. No change.

ITEM 4. Amend subrule 82.2(3) as follows:

82.2(3) Facility staffing.

a. *Qualified ~~mental-retardation~~ intellectual disability professional.* Each client’s active treatment program shall be integrated, coordinated and monitored by a qualified ~~mental-retardation~~ intellectual disability professional who has at least one year of experience working directly with persons with ~~mental retardation~~ an intellectual disability or other developmental disabilities and is one of the following:

- (1) A doctor of medicine or osteopathy.
- (2) A registered nurse.
- (3) An individual who holds at least a bachelor’s degree in a professional category specified in 82.2(3) “b”(5).

b. *Professional program services.*

- (1) to (5) No change.
- (6) If the client’s individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of 82.2(3) “b”(5) are not required except for qualified ~~mental-retardation~~ intellectual disability professionals who must meet the requirements set forth in 82.2(3) “a.”

c. No change.

d. *Direct care (residential living unit) staff.*

- (1) The facility shall provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.
- (2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.
- (3) Direct care staff shall be provided by the facility in the following minimum ratios of direct care staff to clients:
 - 1. For each defined residential living unit serving children under the age of 12, severely and profoundly ~~retarded~~ intellectually disabled clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff-to-client ratio is 1 to 3.2.
 - 2. For each defined residential living unit serving moderately ~~retarded~~ intellectually disabled clients, the staff-to-client ratio is 1 to 4.
 - 3. For each defined residential living unit serving clients who function within the range of mild ~~retardation~~ intellectual disability, the staff-to-client ratio is 1 to 6.4.
 - 4. When there are no clients present in the living unit, a responsible staff member must be available by telephone.

e. No change.

ITEM 5. Amend paragraph **82.2(4)“f”** as follows:

f. *Program monitoring and change.*

(1) The individual program plan shall be reviewed at least by the qualified ~~mental-retardation~~ intellectual disability professional and revised as necessary, including, but not limited to, situations in which the client:

- 1. Has successfully completed an objective or objectives identified in the individual program plan.
- 2. Is regressing or losing skills already gained.
- 3. Is failing to progress toward identified objectives after reasonable efforts have been made.
- 4. Is being considered for training toward new objectives.

(2) to (4) No change.

ITEM 6. Amend subparagraph **82.2(7)“b”(3)** as follows:

(3) The department of inspections and appeals may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified ~~mental retardation~~ intellectual disability professional certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours and documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

ITEM 7. Amend rule 441—82.3(249A), introductory paragraph, as follows:

441—82.3(249A) Conditions of participation for intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability. All intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability must enter into a contractual agreement with the department which sets forth the terms under which they will participate in the program.

ITEM 8. Amend subrule 82.3(2) as follows:

82.3(2) Title XIX provider agreements. The health care facility must be recommended for certification by the Iowa department of inspections and appeals for participation as an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability before a provider agreement may be issued. All survey procedures and certification processes shall be in accordance with Department of Health and Human Services publication “Providers Certification State Operations Manual.” The effective date of a provider agreement may not be earlier than the date of certification.

a. and b. No change.

c. The department may, for good cause, elect not to execute an agreement. Good cause shall be defined as a continued or repeated failure to operate an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability in compliance with rules and regulations of the program.

d. to f. No change.

ITEM 9. Amend subrule 82.5(14) as follows:

82.5(14) Payment to new facility. A facility receiving Medicaid ~~ICF/MR~~ ICF/ID certification on or after July 1, 1992, shall be subject to the provisions of this subrule.

a. A facility receiving initial Medicaid certification for ~~ICF/MR~~ ICF/ID level of care shall submit a budget for six months of operation beginning with the month in which Medicaid certification is given. The budget shall be submitted at least 30 days in advance of the anticipated certification date. The Medicaid per diem rate for a new facility shall be based on the submitted budget subject to review by the accounting firm under contract with the department. The rate shall be subject to a maximum set at the eightieth percentile of all participating community-based Iowa ~~ICFs/MR~~ ICFs/ID with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year. The state hospital schools shall not be included in the compilation of facility costs. The beginning rates for a new facility shall be effective with the date of Medicaid certification.

b. Initial cost report. Following six months of operation as a Medicaid-certified ~~ICF/MR~~ ICF/ID, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used to adjust costs for inflation, instead of the annual percentage increase of the Consumer Price Index. Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

(1) and (2) No change.

c. No change.

d. Completion of 12 months of operation. Following the first 12 months of operation as a Medicaid-certified ~~ICF/MR~~ ICF/ID as described in subrule 82.5(14), the facility shall submit a cost report for the second six months of operation. An on-site audit of facility costs shall be performed by

the accounting firm under contract with the department. Based on the audited cost report, a rate shall be established for the facility. This rate shall be considered the base rate until rebasing of facility costs occurs.

(1) and (2) No change.

e. to g. No change.

ITEM 10. Amend subrule 82.6(1) as follows:

82.6(1) *Interdisciplinary team.* The initial evaluation for admission shall be conducted by an interdisciplinary team. The team shall consist of a physician, a social worker, and other professionals. At least one member of the team shall be a qualified ~~mental-retardation~~ intellectual disability professional.

ITEM 11. Amend paragraph **82.6(2)“c”** as follows:

c. An explicit recommendation with respect to admission or in the case of persons who make application while in the facility, continued care in the facility. Where it is determined that intermediate care facility for ~~the mentally-retarded~~ persons with an intellectual disability services are required by an individual whose needs might be met through the use of alternative services which are currently unavailable, this fact shall be entered in the record, and plans shall be initiated for the active exploration of alternatives.

ITEM 12. Amend subrule 82.6(3) as follows:

82.6(3) *Certification statement.* Eligible individuals may be admitted to an intermediate care facility for ~~the mentally-retarded~~ persons with an intellectual disability upon the certification of a physician that there is a necessity for care at the facility. Eligibility shall continue as long as a valid need for the care exists.

ITEM 13. Amend subrule 82.9(1) as follows:

82.9(1) *Resident care agreement.* The ~~ICF/MR~~ ICF/ID Resident Care Agreement, Form 470-0374, shall be used as a three-party contract among the facility, the resident, and the department to spell out the duties, rights, and obligation of all parties.

ITEM 14. Amend subrule 82.10(4) as follows:

82.10(4) *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

- a. A transfer form of diagnosis.
- b. Aid to daily living information.
- c. Transfer orders.
- d. Nursing care plan.
- e. Physician's or qualified ~~mental-retardation~~ intellectual disability professional's orders for care.
- f. The resident's personal records.
- g. When applicable, the personal needs fund record.

ITEM 15. Amend rule 441—82.11(249A) as follows:

441—82.11(249A) *Continued stay review.* The Iowa Medicaid enterprise (IME) medical services unit shall be responsible for reviews of each resident's need for continuing care in intermediate care facilities for ~~the mentally-retarded~~ persons with an intellectual disability.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 16. Amend rule 441—82.12(249A) as follows:

441—82.12(249A) *Quality of care review.* The Iowa Medicaid enterprise (IME) medical services unit shall carry out the quality of care studies in intermediate care facilities for ~~the mentally-retarded~~ persons with an intellectual disability.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 17. Amend subrule 82.14(4) as follows:

82.14(4) *Periods authorized for payment.*

- a. Payment shall be made on a per diem basis for the portion of the month the resident is in the facility.
- b. Payment will be authorized as long as the resident is certified as needing care in an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability.
- c. Payment will be approved for the day of admission but not the day of discharge or death.
- d. Payment will be approved for periods the resident is absent to visit home for a maximum of 30 days annually. Additional days may be approved for special programs of evaluation, treatment or habilitation outside the facility. Documentation as to the appropriateness and therapeutic value of resident visits and outside programming, signed by a physician or qualified ~~mental retardation~~ intellectual disability professional, shall be maintained at the facility.
- e. and f. No change.

ITEM 18. Amend rule 441—82.18(249A), introductory paragraph, as follows:

441—82.18(249A) Out-of-state facilities. Payment will be made for care in out-of-state intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability. Out-of-state facilities shall abide by the same policies as in-state facilities with the following exceptions:

ITEM 19. Amend rule 441—82.19(249A) as follows:

441—82.19(249A) State-funded personal needs supplement. A Medicaid member living in an intermediate care facility for persons with ~~mental retardation~~ an intellectual disability who has countable income for purposes of rule 441—75.16(249A) of less than \$50 per month shall receive a state-funded payment from the department for the difference between that countable income and \$50 if the legislature has appropriated funding specifically for this purpose. This payment shall not be considered a benefit under Title XIX of the Social Security Act.

This rule is intended to implement Iowa Code ~~Supplement~~ section 249A.30A.